

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 144

HOUSE BILL 2465

AN ACT

AMENDING SECTIONS 13-1601, 13-1602, 13-1801 AND 13-1802, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 37, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3728; AMENDING SECTIONS 13-4903 AND 13-4904, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 11, ARTICLE 3.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 44-1642.01; AMENDING SECTIONS 44-1644 AND 44-1646, ARIZONA REVISED STATUTES; RELATING TO SCRAP METAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-1601, Arizona Revised Statutes, is amended to
3 read:

4 13-1601. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Damaging" means ~~—"damage"—~~ as defined in section 13-1701.

7 2. "Defacing" means any unnecessary act of substantially marring any
8 surface or place, by any means, or any act of putting up, affixing,
9 fastening, printing, ~~—~~ or painting any notice ~~upon~~ ON any structure, without
10 permission from the owner.

11 3. "Litter" includes any rubbish, refuse, waste material, offal,
12 paper, glass, cans, bottles, organic or inorganic trash, debris, filthy or
13 odoriferous objects, dead animals, ~~—~~ or any foreign substance of whatever kind
14 or description, including junked or abandoned vehicles, whether or not any of
15 these items are of value.

16 4. "Property of another" means property in which any person other than
17 the defendant has an interest, including community property and other
18 property in which the defendant also has an interest AND, FOR DAMAGE CAUSED
19 BY THEFT OF SCRAP METAL, THE PROPERTY OF OTHER PERSONS DAMAGED DIRECTLY OR
20 INDIRECTLY AS A RESULT OF THE ACTS OF THE DEFENDANT.

21 5. "Tamper" means any act of interference.

22 6. "Utility" means any enterprise, public or private, ~~which~~ THAT
23 provides gas, electric, IRRIGATION, steam, water, WATER CONSERVATION, sewer
24 or communications services, as well as any common carrier on land, rail, sea
25 or air.

26 Sec. 2. Section 13-1602, Arizona Revised Statutes, is amended to read:

27 13-1602. Criminal damage; classification

28 A. A person commits criminal damage by recklessly:

29 1. Defacing or damaging property of another person; or

30 2. Tampering with property of another person so as substantially to
31 impair its function or value; or

32 3. Tampering with OR DAMAGING the property of a utility.

33 4. Parking any vehicle in such a manner as to deprive livestock of
34 access to the only reasonably available water.

35 5. Drawing or inscribing a message, slogan, sign or symbol that is
36 made on any public or private building, structure or surface, except the
37 ground, and that is made without permission of the owner.

38 B. Criminal damage is punished as follows:

39 1. Criminal damage is a class 4 felony if the person recklessly
40 damages property of another in an amount of ten thousand dollars or more, ~~or~~
41 ~~if the person recklessly causes impairment of the functioning of any utility.~~

42 2. CRIMINAL DAMAGE IS A CLASS 4 FELONY IF THE PERSON RECKLESSLY
43 DAMAGES THE PROPERTY OF A UTILITY IN AN AMOUNT OF FIVE THOUSAND DOLLARS OR
44 MORE OR IF THE PERSON RECKLESSLY CAUSES IMPAIRMENT OF THE FUNCTIONING OF ANY
45 UTILITY.

1 ~~2.~~ 3. Criminal damage is a class 5 felony if the person recklessly
2 damages property of another in an amount of two thousand dollars or more but
3 less than ten thousand dollars.

4 ~~3.~~ 4. Criminal damage is a class 6 felony if the person recklessly
5 damages property of another in an amount of more than two hundred fifty
6 dollars but less than two thousand dollars.

7 ~~4.~~ 5. In all other cases criminal damage is a class 2 misdemeanor.

8 Sec. 3. Section 13-1801, Arizona Revised Statutes, is amended to read:
9 13-1801. Definitions

10 A. In this chapter, unless the context otherwise requires:

11 1. "Check" means any check, draft or other negotiable or nonnegotiable
12 instrument of any kind.

13 2. "Control" or "exercise control" means to act so as to exclude
14 others from using their property except on the defendant's own terms.

15 3. "Credit" means an express agreement with the drawee for the payment
16 of a check.

17 4. "Deprive" means to withhold the property interest of another either
18 permanently or for so long a time period that a substantial portion of its
19 economic value or usefulness or enjoyment is lost, to withhold with the
20 intent to restore it only ~~upon~~ ON payment of any reward or other compensation
21 or to transfer or dispose of it so that it is unlikely to be recovered.

22 5. "Draw" means making, drawing, uttering, preparing, writing or
23 delivering a check.

24 6. "Funds" means money or credit.

25 7. "Issue" means to deliver or cause to be delivered a check to a
26 person who thereby acquires a right against the drawer with respect to the
27 check. A person who draws a check with the intent that it be so delivered is
28 deemed to have issued it if the delivery occurs.

29 8. "Material misrepresentation" means a pretense, promise,
30 representation or statement of present, past or future fact that is
31 fraudulent and that, when used or communicated, is instrumental in causing
32 the wrongful control or transfer of property or services. The pretense may
33 be verbal or it may be a physical act.

34 9. "Means of transportation" means any vehicle.

35 10. "Obtain" means to bring about or to receive the transfer of any
36 interest in property, whether to a defendant or to another, or to secure the
37 performance of a service or the possession of a trade secret.

38 11. "Pass" means, for a payee, holder or bearer of a check that
39 previously has been or purports to have been drawn and issued by another, to
40 deliver a check, for a purpose other than collection, to a third person who
41 by delivery acquires a right with respect to the check.

42 12. "Property" means any thing of value, tangible or intangible,
43 including trade secrets.

1 13. "Property of another" means property in which any person other than
2 the defendant has an interest on which the defendant is not privileged to
3 infringe, including property in which the defendant also has an interest,
4 notwithstanding the fact that the other person might be precluded from civil
5 recovery because the property was used in an unlawful transaction or was
6 subject to forfeiture as contraband. Property in possession of the defendant
7 is not deemed property of another person who has only a security interest in
8 the property, even if legal title is in the creditor pursuant to a security
9 agreement.

10 14. "Services" includes labor, professional services, transportation,
11 cable television, computer or communication services, gas or electricity
12 services, accommodation in hotels, restaurants or leased premises or
13 elsewhere, admission to exhibitions and use of vehicles or other movable
14 property.

15 15. "Value" means the fair market value of the property or services at
16 the time of the theft. THE VALUE OF FERROUS METAL OR NONFERROUS METAL, AS
17 DEFINED IN SECTION 44-1641, IS THE AVERAGE FAIR MARKET VALUE OF THE METAL AS
18 SCRAP METAL IN THE LOCAL AREA TOGETHER WITH THE REPAIR OR REPLACEMENT VALUE
19 OF ANY PROPERTY FROM WHICH THE SCRAP METAL WAS REMOVED AT THE TIME OF THE
20 THEFT. Written instruments that do not have a readily ascertained market
21 value have as their value either the face amount of indebtedness less the
22 portion satisfied or the amount of economic loss involved in deprivation of
23 the instrument, whichever is greater. When property has an undeterminable
24 value the trier of fact shall determine its value and, in reaching its
25 decision, may consider all relevant evidence, including evidence of the
26 property's value to its owner.

27 B. In determining the classification of the offense, the state may
28 aggregate in the indictment or information amounts taken in thefts committed
29 pursuant to one scheme or course of conduct, whether the amounts were taken
30 from one or several persons.

31 Sec. 4. Section 13-1802, Arizona Revised Statutes, is amended to read:
32 13-1802. Theft; classification; definition

33 A. A person commits theft if, without lawful authority, the person
34 knowingly:

35 1. Controls property of another with the intent to deprive the other
36 person of such property; or

37 2. Converts for an unauthorized term or use services or property of
38 another entrusted to the defendant or placed in the defendant's possession
39 for a limited, authorized term or use; or

40 3. Obtains services or property of another by means of any material
41 misrepresentation with intent to deprive the other person of such property or
42 services; or

1 4. Comes into control of lost, mislaid or misdelivered property of
2 another under circumstances providing means of inquiry as to the true owner
3 and appropriates such property to the person's own or another's use without
4 reasonable efforts to notify the true owner; or

5 5. Controls property of another knowing or having reason to know that
6 the property was stolen; or

7 6. Obtains services known to the defendant to be available only for
8 compensation without paying or an agreement to pay the compensation or
9 diverts another's services to the person's own or another's benefit without
10 authority to do so.

11 B. A person commits theft if the person knowingly takes control,
12 title, use or management of an incapacitated or vulnerable adult's assets or
13 property through intimidation or deception, as defined in section 46-456,
14 while acting in a position of trust and confidence and with the intent to
15 deprive the incapacitated or vulnerable adult of the asset or property.

16 C. The inferences set forth in section 13-2305 apply to any
17 prosecution under subsection A, paragraph 5 of this section.

18 D. At the conclusion of any grand jury proceeding, hearing or trial,
19 the court shall preserve any trade secret that is admitted in evidence or any
20 portion of a transcript that contains information relating to the trade
21 secret pursuant to section 44-405.

22 E. Theft of property or services with a value of twenty-five thousand
23 dollars or more is a class 2 felony. Theft of property or services with a
24 value of four thousand dollars or more but less than twenty-five thousand
25 dollars is a class 3 felony. Theft of property or services with a value of
26 three thousand dollars or more but less than four thousand dollars is a class
27 4 felony, except that theft of any vehicle engine or transmission is a class
28 4 felony regardless of value. Theft of property or services with a value of
29 two thousand dollars or more but less than three thousand dollars is a class
30 5 felony. Theft of property or services with a value of one thousand dollars
31 or more but less than two thousand dollars is a class 6 felony. Theft of any
32 property or services valued at less than one thousand dollars is a class 1
33 misdemeanor, unless the property is taken from the person of another, is a
34 firearm or is a dog taken for the purpose of dog fighting in violation of
35 section 13-2910.01, in which case the theft is a class 6 felony.

36 F. A person who is convicted of a violation of subsection A, paragraph
37 1 or 3 of this section that involved property with a value of one hundred
38 thousand dollars or more is not eligible for suspension of sentence,
39 probation, pardon or release from confinement on any basis except pursuant to
40 section 31-233, subsection A or B until the sentence imposed by the court has
41 been served, the person is eligible for release pursuant to section
42 41-1604.07 or the sentence is commuted.

43 G. FOR THE PURPOSES OF THIS SECTION, THE VALUE OF FERROUS METAL OR
44 NONFERROUS METAL INCLUDES THE AMOUNT OF ANY DAMAGE TO THE PROPERTY OF ANOTHER
45 CAUSED AS A RESULT OF THE THEFT OF THE SCRAP METAL.

1 H. IN AN ACTION FOR THEFT OF FERROUS METAL OR NONFERROUS METAL:

2 1. UNLESS SATISFACTORILY EXPLAINED OR ACQUIRED IN THE ORDINARY COURSE
3 OF BUSINESS BY AN AUTOMOTIVE RECYCLER AS DEFINED AND LICENSED PURSUANT TO
4 TITLE 28, CHAPTER 10 OR BY A SCRAP METAL DEALER AS DEFINED IN SECTION
5 44-1641, PROOF OF POSSESSION OF SCRAP METAL THAT WAS RECENTLY STOLEN MAY GIVE
6 RISE TO AN INFERENCE THAT THE PERSON IN POSSESSION OF THE SCRAP METAL WAS
7 AWARE OF THE RISK THAT IT HAD BEEN STOLEN OR IN SOME WAY PARTICIPATED IN ITS
8 THEFT.

9 2. UNLESS SATISFACTORILY EXPLAINED OR SOLD IN THE ORDINARY COURSE OF
10 BUSINESS BY AN AUTOMOTIVE RECYCLER AS DEFINED AND LICENSED PURSUANT TO TITLE
11 28, CHAPTER 10 OR BY A SCRAP METAL DEALER AS DEFINED IN SECTION 44-1641,
12 PROOF OF THE SALE OF STOLEN SCRAP METAL AT A PRICE SUBSTANTIALLY BELOW ITS
13 FAIR MARKET VALUE MAY GIVE RISE TO AN INFERENCE THAT THE PERSON SELLING THE
14 SCRAP METAL WAS AWARE OF THE RISK THAT IT HAD BEEN STOLEN.

15 I. FOR THE PURPOSES OF THIS SECTION, "FERROUS METAL" AND "NONFERROUS
16 METAL" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 44-1641.

17 Sec. 5. Title 13, chapter 37, Arizona Revised Statutes, is amended by
18 adding section 13-3728, to read:

19 13-3728. Unlawful purchase or sale of used catalytic converter;
20 classification

21 A. IT IS UNLAWFUL FOR A PERSON TO PURCHASE OR SELL A USED CATALYTIC
22 CONVERTER UNLESS THE PURCHASE OR SALE IS IN THE ORDINARY COURSE OF BUSINESS
23 BY A COMMERCIAL MOTOR VEHICLE PARTS OR REPAIR BUSINESS IN CONNECTION WITH THE
24 SALE OR INSTALLATION OF A NEW CATALYTIC CONVERTER.

25 B. THIS SECTION DOES NOT APPLY TO AN AUTOMOTIVE RECYCLER AS DEFINED
26 AND LICENSED PURSUANT TO TITLE 28, CHAPTER 10 OR A SCRAP METAL DEALER AS
27 DEFINED IN SECTION 44-1641.

28 C. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

29 Sec. 6. Section 13-4903, Arizona Revised Statutes, is amended to read:

30 13-4903. Use of force; armed nuclear security guards

31 A. An armed nuclear security guard is justified in using physical
32 force against another person at a commercial nuclear generating station or
33 structure or fenced yard of a commercial nuclear generating station if the
34 armed nuclear security guard reasonably believes that such force is necessary
35 to prevent or terminate the commission or attempted commission of criminal
36 damage under section 13-1602, subsection A, paragraph 3 and subsection B,
37 paragraph 1 OR 2, misconduct involving weapons under section 13-3102,
38 subsection A, paragraph 13 or criminal trespass on a commercial nuclear
39 generating station under section 13-4902.

40 B. Notwithstanding sections 13-403, 13-404, 13-405, 13-406, 13-408,
41 13-409, 13-410 and 13-411, an armed nuclear security guard is justified in
42 using physical force up to and including deadly physical force against
43 another person at a commercial nuclear generating station or structure or
44 fenced yard of a commercial nuclear generating station if the armed nuclear
45 security guard reasonably believes that such force is necessary to:

1 1. Prevent the commission of manslaughter under section 13-1103,
2 second or first degree murder under section 13-1104 or 13-1105, aggravated
3 assault under section 13-1204, subsection A, paragraph 1 or 2, kidnapping
4 under section 13-1304, burglary in the second or first degree under section
5 13-1507 or 13-1508, arson of a structure or property under section 13-1703,
6 arson of an occupied structure under section 13-1704, armed robbery under
7 section 13-1904 or an act of terrorism under section 13-2308.01.

8 2. Defend oneself or a third person from the use or imminent use of
9 deadly physical force.

10 C. Notwithstanding any other provision of this chapter, an armed
11 nuclear security guard is justified in threatening to use physical or deadly
12 physical force if and to the extent a reasonable armed nuclear security guard
13 believes it necessary to protect oneself or others against another person's
14 potential use of physical force or deadly physical force.

15 D. An armed nuclear security guard is not subject to civil liability
16 for engaging in conduct that is otherwise justified pursuant to this chapter.

17 Sec. 7. Section 13-4904, Arizona Revised Statutes, is amended to read:
18 13-4904. Detention authority; armed nuclear security guards

19 A. An armed nuclear security guard, with reasonable belief, may detain
20 in or on a commercial nuclear generating station or a structure or fenced
21 yard of a commercial nuclear generating station in a reasonable manner and
22 for a reasonable time any person who is suspected of COMMITTING or attempting
23 to commit manslaughter under section 13-1103, second or first degree murder
24 under section 13-1104 or 13-1105, aggravated assault under section 13-1204,
25 subsection A, paragraph 1 or 2, kidnapping under section 13-1304, burglary in
26 the second or first degree under section 13-1507 or 13-1508, criminal damage
27 under section 13-1602, subsection A, paragraph 3 and subsection B, paragraph
28 1 OR 2, arson of a structure or property under section 13-1703, arson of an
29 occupied structure under section 13-1704, armed robbery under section
30 13-1904, an act of terrorism under section 13-2308.01, misconduct involving
31 weapons under section 13-3102, subsection A, paragraph 13 or criminal
32 trespass on a commercial nuclear generating station under section 13-4902 for
33 the purpose of summoning a law enforcement officer.

34 B. Reasonable belief of an armed nuclear security guard is a defense
35 to a civil or criminal action against an armed nuclear security guard for
36 false arrest, false or unlawful imprisonment or wrongful detention.

37 Sec. 8. Title 44, chapter 11, article 3.1, Arizona Revised Statutes,
38 is amended by adding section 44-1642.01, to read:

39 44-1642.01. Prohibited scrap metal transactions; exceptions

40 A. A SCRAP METAL DEALER SHALL NOT KNOWINGLY PURCHASE THE FOLLOWING
41 TYPES OF SCRAP METAL IN ITS ORIGINAL MANUFACTURED FORM:

42 1. METAL MANHOLE COVERS THAT ARE USED TO COVER STREET OR ALLEY SERVICE
43 PERSONNEL ACCESS ENTRANCES TO MUNICIPAL SEWERS AND STORM DRAINS.

44 2. BRASS OR BRONZE VALVES OR FITTINGS THAT ARE COMMONLY USED ON
45 STRUCTURES FOR ACCESS TO WATER FOR THE PURPOSE OF EXTINGUISHING FIRES.

4. WATER METERS THAT ARE USED FOR MEASUREMENT OF THE USE AND CONSUMPTION OF DOMESTIC WATER.

5. ALUMINUM TRENCH SHORING THAT IS COMMONLY USED FOR SHORING BELOW GROUND TRENCHES AND EXCAVATIONS FOR THE CONSTRUCTION OF BUILDINGS AND STRUCTURES.

6. ALUMINUM LOADING RAMPS THAT ARE MANUFACTURED AND USED FOR LOADING MOTOR VEHICLES FOR HAULING THE MOTOR VEHICLES.

7. ALUMINUM OR STAINLESS STEEL BEER OR MALT BEVERAGE KEGS THAT ARE COMMONLY USED BY BREWERS OR PRODUCERS FOR THE SALE AND TRANSPORTATION OF BEER OR MALT BEVERAGES.

8. CATALYTIC CONVERTERS. FOR THE PURPOSES OF THIS PARAGRAPH, "CATALYTIC CONVERTERS" MEANS MOTOR VEHICLE EXHAUST SYSTEM PARTS THAT ARE USED FOR CONTROLLING THE EXHAUST EMISSIONS FROM MOTOR VEHICLES AND THAT CONTAIN A CATALYST METAL.

B. THIS SECTION DOES NOT APPLY TO OR PROHIBIT THE PURCHASE OR POSSESSION OF THE TYPES OF ITEMS LISTED IN SUBSECTION A AND THAT ARE ACQUIRED IN TRANSACTIONS WITH INDUSTRIAL ACCOUNTS, WITH OTHER SCRAP METAL DEALERS OR AFTER THE SCRAP METAL IS AUTHORIZED FOR RELEASE BY A PEACE OFFICER OF THAT JURISDICTION.

Sec. 9. Section 44-1644, Arizona Revised Statutes, is amended to read:

44-1644. Report to the department of public safety; exemption;

violation; classification

A. Within twenty-four hours of receipt of scrap metals, except from an industrial account or a scrap metal dealer, for which a record is required to be kept by section 44-1642, a scrap metal dealer shall deliver ELECTRONICALLY SUBMIT to the department of public safety a record of the receipt of the scrap metals. The record shall include the following information:

1. The date, time and place of the receipt of the scrap metal.

2. An identifying description of the specific scrap metal received including the weight and amount of the transaction or other consideration given.

3. A description of the person delivering the metal to the scrap metal dealer including the person's gender, height, weight, race and hair and eye color, address and date of birth and a photocopy of a current driver license, nonoperating identification license issued pursuant to section 28-3165 or photo identification card issued by a tribal government or the United States military.

4. The number and state of issuance of the license on the vehicle used to deliver the scrap metal.

B. THE DEPARTMENT OF PUBLIC SAFETY SHALL ESTABLISH BY RULE ELECTRONIC SUBMISSION STANDARDS. THE SUBMISSION STANDARDS SHALL ALLOW THE SUBMISSION OF THE INFORMATION IN AN ELECTRONIC FORMAT THAT IS COMPATIBLE WITH THE OUTPUT

1 FORMAT OF NOT LESS THAN FOUR OF THE RECORD KEEPING SOFTWARE PROGRAMS
2 CURRENTLY IN USE IN THE SCRAP METAL INDUSTRY IN THIS STATE IN A MANNER THAT
3 WILL ALLOW THE INFORMATION TO BE ELECTRONICALLY MERGED WITH THE DEPARTMENT OF
4 PUBLIC SAFETY'S DATABASE. A SCRAP METAL DEALER THAT SUBMITS INFORMATION TO
5 THE DEPARTMENT OF PUBLIC SAFETY PURSUANT TO THIS SECTION SHALL NOT BE
6 REQUIRED TO SUBMIT THE SAME INFORMATION TO A LOCAL LAW ENFORCEMENT AGENCY.

7 C. THE DEPARTMENT OF PUBLIC SAFETY SHALL MAKE THE INFORMATION
8 SUBMITTED PURSUANT TO THIS SECTION AVAILABLE TO LOCAL LAW ENFORCEMENT
9 AGENCIES OVER THE INTERNET AND SHALL PROVIDE FOR TRAINING AND PROCEDURES TO
10 ALLOW LAW ENFORCEMENT PERSONNEL TO ACCESS THE INFORMATION PROVIDED
11 ELECTRONICALLY FOR LAW ENFORCEMENT PURPOSES.

12 ~~B.~~ D. For copper, aluminum wire with a diameter of at least
13 three-eighths of an inch and transactions with a value over one hundred
14 dollars, a scrap metal dealer shall hold in its custody in the same size,
15 shape and condition in which the scrap metal was received on its business
16 premises any scrap metal received in a reportable transaction for seven days
17 after filing the report prescribed by subsection A of this section.

18 ~~E.~~ E. Subsection ~~B.~~ D of this section does not apply to transactions
19 with industrial accounts, other scrap metal dealers or purchases by scrap
20 metal dealers of used aluminum beverage containers or ferrous scrap metals
21 and of scrap metal authorized for release by a peace officer of that
22 jurisdiction.

23 ~~F.~~ F. A person who fails to file a report prescribed by this section
24 is guilty of a class 1 misdemeanor.

25 Sec. 10. Section 44-1646, Arizona Revised Statutes, is amended to
26 read:

27 44-1646. Burned metallic wire; aluminum wire; copper wire;
28 transaction restrictions; applicability

29 A. A scrap metal dealer shall not purchase or otherwise receive
30 metallic wire that was burned in whole or in part to remove insulation unless
31 the scrap metal dealer receives from the scrap metal seller written evidence
32 identifying the person who delivers the wire to the scrap metal dealer that
33 includes evidence that the wire was lawfully burned.

34 B. A scrap metal dealer shall not accept aluminum wire with a diameter
35 of at least three-eighths of an inch or any copper wire that has had the
36 insulation removed and shall not remove the insulation from the wire until
37 after the seven day period prescribed by section 44-1644, subsection ~~B.~~ D.

38 C. This section does not apply to transactions with all industrial
39 accounts or to transactions between scrap metal dealers.

40 Sec. 11. Effective date

41 Sections 44-1644 and 44-1646, Arizona Revised Statutes, as amended by
42 this act, are effective from and after August 31, 2010.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.